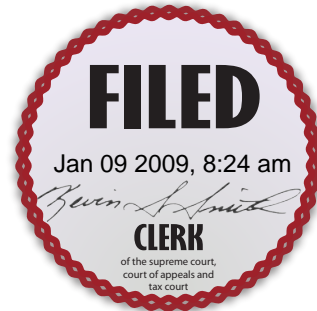


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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WAYNE R. KALEY, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 02A05-0810-CR-607

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APPEAL FROM THE ALLEN SUPERIOR COURT  
The Honorable Robert J. Schmoll, Magistrate  
Cause No. 02-D04-0512-FC-246

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**January 9, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Wayne Kaley appeals the trial court's revocation of his probation. He raises one issue, which we restate as whether the evidence is sufficient to support the revocation of his probation. We affirm.

The relevant facts follow. In 2006, Kaley pled guilty to child solicitation as a class D felony and two counts of sexual misconduct with a minor as class C felonies. On April 28, 2006, the trial court sentenced Kaley to eight years on each count of sexual misconduct with a minor as a class C felony and two years for child solicitation as a class D felony. The trial court ordered that the sentences be served concurrently, suspended the entire sentence, and placed Kaley on probation for a period of four years. The following condition was imposed on Kaley's probation: "You will have no contact with any child under the age of eighteen (18). Contact includes face-to-face, telephone, written, electronic, or indirect contact via third parties. You must report any incidental contact with persons under the age of eighteen (18) to your probation officer within 24 hours." Appellant's Appendix at 46.

Kaley would come into the office at Carrington Pointe, a community in Fort Wayne, Indiana, to pay rent for the lot where his wife lived. Kaley's wife has three daughters, a four-year-old, an eight-year old, and a fourteen-year-old. Jennifer Sprunger, the office coordinator at Carrington Pointe, came to recognize Kaley when he would come in to the office to pay the rent. On June 20, 2008, Kaley's wife went to the community pool with her eight-year old and four-year old. Kaley came into the office at Carrington Pointe and walked straight to the pool area. Sprunger took pictures of the

pool area from inside the building and then went outside to take additional pictures. Sprunger took a picture of Kaley and children at the pool. Kaley talked and “communicat[ed]” with the children. Transcript at 14. Kaley was in the pool area for “about fifteen minutes.” Id. at 15.

On June 23, 2008, the State filed a verified petition for revocation of probation alleging that Kaley had violated the terms of his probation by having contact with children under the age of eighteen. After a hearing, the trial court found that Kaley had violated his probation by having contact with children under the age of eighteen. The trial court modified Kaley’s sentences for each count of sexual misconduct with a minor as class C felonies to eight years with four years executed and four years suspended with four years probation subject to the conditions ordered April 28, 2006. The trial court also ordered that the two-year sentence for child solicitation as a class D felony be executed and that the sentences be served concurrently. The trial court also ordered that “community control is added as a condition for one year and [Kaley] is not to go within 1,000 feet of his wife’s residence.” Appellant’s Appendix at 67.

The sole issue is whether the evidence is sufficient to support the revocation of Kaley’s probation. Probation revocation is governed by Ind. Code § 35-38-2-3. A probation revocation hearing is civil in nature, and the State need only prove the alleged violations by a preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999), reh’g denied. We will consider all the evidence most favorable to supporting the judgment of the trial court without reweighing that evidence or judging the credibility of

witnesses. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). “If there is substantial evidence of probative value to support the trial court’s conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation.” Cox, 706 N.E.2d at 551.

Kaley relies on Hunter v. State, 883 N.E.2d 1161, 1164 (Ind. 2008), to argue that the evidence is insufficient. In Hunter, the defendant was alleged to have violated the following probation condition:

The defendant must never be alone with or have contact with any person under the age of 18. Contact includes face-to-face, telephonic, written, electronic, or any indirect contact via third parties. You must report any incidental contact with persons under age 18 to your probation officer within 24 hours of the contact.

Id. at 1162. There were times when the children came home before the defendant left but there was no evidence that the defendant talked with the children. Id. Specifically, the Court held that “[t]here was no definitive evidence presented to establish that the defendant had any face-to-face contact with the children.” Id. at 1163. The Court also described the record as merely “occasions of simply momentary presence in the same residence with children where the defendant immediately left without interacting with them.” Id. at 1163. The Court held that “contact” in the condition of probation contained an “element of communication” and “is not commonly understood to occur by mere presence alone.” Id. at 1164. The Court concluded that “[t]he probation condition in this

case lacked sufficient clarity to provide the defendant with fair notice that the conduct at issue would constitute a violation of probation.” Id.

Kaley argues that “the only evidence of communication that may have been considered proven was that [Kaley] talked to one or more of the children for such a short period of time that the photographer did not have sufficient time to take a photograph.” Appellant’s Brief at 6. Kaley also argues that “knowing that the conversation was of minimum time, it is submitted this is not the type of contact contemplated by the conditions of probation.” Id.

Here, unlike in Hunter, the record reveals through Sprunger’s testimony that Kaley talked to the children. To the extent that Kaley challenges the pictures, we note that Sprunger testified that she “just took random pictures . . . .”<sup>1</sup> Transcript at 16. Kaley asks that we reweigh the evidence, which we cannot do. Cox, 706 N.E.2d at 551. We conclude the evidence is sufficient to support the revocation of Kaley’s probation. See Smith v. State, 727 N.E.2d 763, 766 (Ind. Ct. App. 2000) (holding that the evidence presented at the revocation hearing was sufficient to support the trial court’s order of revocation because the defendant had contact with a five-year-old boy). While the facts supporting a violation of probation are much stronger in Smith than in the instant case, considering the evidence most favorable to supporting the judgment of the trial court and in light of the well settled rule that the uncorroborated testimony of a single witness is

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<sup>1</sup> Kaley’s wife testified that Sprunger said that she was “getting pictures for measurements and doing a pamphlet.” Transcript at 69.

sufficient to sustain a conviction, we find the instant case analogous to Smith and distinguishable from Hunter.

For the foregoing reasons, we affirm the revocation of Kaley's probation.

Affirmed.

ROBB, J. and CRONE, J. concur